

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 228 of 1985

Hon'ble MR.JUSTICE S.D.DAVE

and

Hon'ble MR.JUSTICE Y.B.BHATT

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
-

STATE OF GUJARAT

Versus

VITTHAL NARAYAN

Appearance:

MR K.C. SHAH, PUBLIC PROSECUTOR for Appellant
MR PM VYAS for Respondent No. 1, 2, 3, 4, 5

CORAM : MR.JUSTICE S.D.DAVE and

MR.JUSTICE Y.B.BHATT

Date of decision: 29/07/97

ORAL JUDGEMENT (Per S.D. Dave J.)

1. The respondents-accused came to be acquitted of the offences punishable under sections 147, 148, 149 read

with section 302 and 324 IPC and under section 302 and 324 read with section 34 IPC and under section 135 of the Bombay Police Act, 1949 by the learned Additional Sessions Judge, Court No.16, Ahmedabad City, in Sessions Case No.92 of 1984, under the judgement dated December 7, 1984. The appellant-State feel aggrieved by the abovesaid order and therefore the present appeal against the orders of acquittal.

2. The respondents-accused were put on trial for the alleged commission of the abovesaid offences on the accusation that they having formed an unlawful assembly on April 26, 1984 at about 9.30 p.m. near Shahpur Darwaja in the city of Ahmedabad, and having armed with deadly weapons, had committed rioting and had murdered deceased Jayantibhai Dudha and had caused injuries on the person of prosecution witness Pratap Narayan Rao. Alternatively the accused persons were charged of having committed the offence of murder and causing injuries in furtherance of their common object or intention. The charge at Exh.3 came to be denied by the accused persons. The learned Additional Sessions Judge was not satisfied with the evidence which was brought on the record and hence the orders of acquittal.

3. While pronouncing the orders of acquittal the learned trial Judge has considered with pertinence the relevant evidence on record. It was the view of the court below that much would depend upon the oral testimony of Pratap Narayan Rao (PW No.3, Exh.27) and of Dahyabhai Solanki (PW No.7, Exh.33). The court has also considered the evidence of Kishore Jethalal (PW No.8, Exh.34). Upon the scrutiny of this evidence the court below has come to the conclusion that no reliance whatsoever could have been placed upon the oral testimony of the abovesaid witnesses. The court below thereafter has come to the conclusion that the case of the prosecution cannot be said to have been established against the respondents-accused.

4. The endeavour on the part of the learned government counsel Mr. K.C. Shah who appears for the appellant State was to convince us that at least the sworn testimony of Dahyabhai Solanki (PW No.7, Ex.33) could have been inspired the necessary confidence in the judicial conscience and that the abovesaid testimony would be sufficient to lead to the conclusion that the case of the prosecution stands duly proved against the respondents-accused. With a view to appreciate this contention coming from learned government counsel Mr. K.C. Shah, we have seen carefully the evidence not only

of Dahyabhai Solanki (PW No.7, Exh.33), but also of Pratap Narayan Rao (PW No.3, Exh.27) along with the medical evidence tendered by Dr. Shah (PW No.4, Exh.28) and Dr. Patel (PW No.5, Exh.31). Upon a conjoint reading of this evidence we have gathered the impression that the learned trial Judge was perfectly justified in coming to the conclusion that there were lot many discrepancies in the evidence being tendered by Pratap Narayan Rao and Dahyabhai Solanki.

5. Pratap Narayan Rao (PW No.3, Exh.27) happens to be the injured who allegedly had received certain injuries during the incident and therefore, necessarily, there is a contention coming from learned government counsel Mr. K.C. Shah that his evidence should not be thrown overboard lightly. While reading the evidence of this witness we are conscious of this contention coming from the learned government counsel. This witness has said that at the relevant time the accused no.1 was having a gupti, while accused no.2 was having a knuckleduster. According to him accused no.1 had given a gupti blow on the left abdomen of the deceased Jayantibhai and accused no.2 Govind had given certain blows by the knuckleduster. His say further is that he also came to be injured during the accident when accused no.1 Vithal had given him the gupti blows. According to him he had received three gupti blows on his person. Thus, Pratap Narayan Rao says not only in respect of the injuries being sustained by Jayantibhai, but also testifies in respect of his own injuries. But when the evidence of Dr. Shah (PW No.4, Exh.28) is read along with the evidence of Pratap Narayan Rao, it appears that this is a clear case of the ocular version running counter to the medical evidence. Dr. Shah has said in his evidence that Pratap Narayan Rao had gone to the V.S. Hospital without the Police Yadi and on examination by him he had seen the following injuries on his person:

i) "Clean cut wound over rt. frontal region
(incised) 1/2 X 1/4 X 1/4 c.m.

ii) Clean cut wound (incised) over left iliac
creast. 1/2 X 1/4 X 1/4 c.m."

Dr. Shah has said that these injuries were possible by sharp cutting instrument like a gupti, muddamal article no.1, which was before the court. It should be appreciated that Dr. Shah has said very clearly that the abovesaid two injuries were clean-cut wounds. Anyhow, within the brackets the injuries are also described as

incised wounds. Clarifying this situation, during the cross-examination Dr. Shah has candidly said that in his case papers which were produced before the court, the injuries were shown as "clean-cut wounds" in the blue ink. Dr. Shah further says that thereafter the injuries have been once again described as "incised wounds" in the black ink. Dr. Shah also says that in the case papers the situs of the injury no.2 has also been changed. There is absolutely no explanation coming from the prosecution regarding the correction in the medical case papers in the form of rewriting of certain words. It is, therefore, clear that the abovesaid medical case papers would not be able to inspire confidence for a judicial mind. It appears very clearly that the injuries which were at the initial stage recorded as "clean-cut-wounds" came to be described as "incised wounds" at a later juncture by somebody in a different ink. We are left without any explanation in this respect.

6. This evidence of Dr. Shah falsifies Pratap Narayan Rao in respect of more than one aspect of his say. As noticed earlier, Pratap Narayan Rao has said that he had received three gupti blows. Dr. Shah speaks of only two blows. Moreover, the gupti blows would be stab wounds. Anyhow, the medical papers firstly showed "clean-cut-wounds" which later on came to be described as "incised wounds". The say of Dr. Shah in the cross-examination that the injuries on the person of Pratap Narayan Rao are possible by any sharp edged instrument other than gupti puts an end to the entire matter. Therefore, when the evidence of Pratap Narayan Rao is read along with the medical evidence on record, it becomes clear that though Pratap Narayan Rao happens to be an injured witness, his testimony has rightly not been accepted by the court below not only for the purpose of his own injuries, but also for the injuries on the person of the deceased.

7. That would take us to the testimony of Dahyabhai Solanki (P.W. No.7 Exh.33). Dahyabhai Solanki who happens to be the resident of the very same locale and claims to be a social worker working in the area has stated that at the relevant time he and his friend Kishore were talking near the spot of the occurrence and at that time Pratap Narayan Rao and Jayantibhai Dudha came to be assaulted by five persons. According to him they are the respondents-accused. His say regarding the injuries which came to be sustained by deceased Jayantibhai is that accused no.1 had given him a stab blow while the accused no.2 had given him knuckleduster blows. According to him, two or three gupti blows were

also given to Pratap Narayan Rao. According to this witness he was at a distance of about 25 paces from the scene of occurrence and because of the mercury lamp light there was a clear visibility and he was able to see everything which had happened.

8. It requires to be appreciated that his say that Pratap Narayan Rao had received two or three gupti blows stands falsified by the medical evidence tendered by dr. Shah at Exh.28. So far as the injuries on the person of the deceased Jayantibhai Dudha is concerned, the reference is required to be made to the oral testimony of Dr. Patel (PW No.5, Ex.31). Dr. Patel has stated that while working at the Municipal Medical College attached to V.S.. Hospital he had performed the autopsy on the dead body of Jayantibhai. According to Dr. Patel, he had noticed 17 external injuries on the person of the deceased as have been indicated in column No.17 of the post-mortem report. Injury nos.1 to 15 are bruises and abrasions. Injury nos.16 and 17 are the stab wounds. Therefore, according to this evidence tendered by Dr. Patel at Exh.31, which requires to be read along with post-mortem report, there were 15 other injuries which could not have been caused by the gupti. Dr. Patel has also stated in his evidence that there were 3 hematomas under the abrasions on the person of the deceased and he had also noticed a fracture of 6th costal cartilage. According to Dr. Patel, the stab injuries which have been described at serial nos.16 and 17 could have been possible by a sharp-cutting instrument like gupti, the muddamal article no.1. During the cross-examination he has said that the hematoma and the fracture could have been possible as a result of the blows by the stick. He has also stated that more than 15 blows must have been given to the deceased for causing the injuries like bruises and abrasions described at serial nos.1 to 15 of the post-mortem note. Neither Pratap Narayan Rao nor Dahyabhai Solanki speaks anything regarding such injuries which could have been caused by the hard and blunt substance like the stick. Therefore, once again we shall have to notice that the evidence tendered by Dahyabhai Solanki (PW No.7 Exh.33) runs counter to the medical evidence on record.

9. Not only this, but the evidence of Dahyabhai suffers from many other infirmities also as has been pointed out by the court below. Dahyabhai was a social worker, having his activities in the locality and used to know the deceased and the injured. The court below has rightly pointed out that his conduct was entirely unbelievable regard being had to the fact of his

relationship with the deceased and the injured. The evidence tendered by Dahyabhai goes to show that though he was standing about 25 paces away from the place of occurrence, he had stood during the entire period as "a statue". The court below has noticed that during the entire assault he had remained a silent spectator. He had not only not intervened, but had not raised a hue and cry so that somebody else could come and render assistance to the injured and the deceased. He has also stated that the police station is situated just in the vicinity, but he had not cared to inform anybody. The court below has also noticed that after the incident was over he had gone to his house and thereafter had gone to the hospital where his relation was under the treatment for providing her with tiffin and had returned to the house and had a peaceful sleep for the night. The court below has also noticed that on the next day when the police had come to call him, he had given a version before the police describing himself as an eye witness. At the top of all this we shall have to notice that Pratap Narayan Rao in his testimony has never said that Dahyabhai Solanki was present on the spot and that he was an eye witness to the incident.

10. In view of this evidence, in our opinion, the court below was perfectly justified in recording the judgement of acquittal. We do not see any justifiable cause for our interference in the present appeal and the same requires to be dismissed. We order accordingly. The bail bonds against the respondents-accused shall stand cancelled.

11. Before parting we must note that it has been brought to our notice that an amount of Rs.15000/- has been contributed by the accused persons for the welfare of the near relations of the deceased Jayantibhai Dudha.
